



NORTH CAROLINA GENERAL ASSEMBLY

Session 2021

Legislative Incarceration Fiscal Note

Short Title: Criminal Justice Reform.
Bill Number: Senate Bill 300 (First Edition)
Sponsor(s): Senators Britt, Daniel, and Lee

SUMMARY TABLES

CHARGES

	<i>Charge</i>	<i>Cost per Charge</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
Administrative Office of the Courts	Class H Felony → G Felony	\$417 increase per charge	Deputy Clerk: \$54,532	131 increased charges = 1 new Deputy Clerk
	Class 1 Misdemeanor → H Felony	\$559 increase per charge		98 increased charges = 1 new Deputy Clerk
Office of Indigent Defense Services	Class H Felony → G Felony	Percent of cases handled by IDS: 78%		Per increased charge to the PAC fund \$157
	Class 1 Misdemeanor → H Felony			Per increased charge to the PAC fund \$270

CONVICTIONS – ACTIVE SENTENCE

	<i>Charge</i>	<i>Avg. Active</i>	<i>Cost per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
DPS – Prisons	Class H Felony → G Felony	40%	\$2,580 increase in custody per conviction	Correction Officer I: \$49,173	19 additional convictions = 1 new CO
	Class 1 Misdemeanor → H Felony	34%	Custody: \$6,450		8 new convictions = 1 new CO
DPS – Community Corrections	Class H Felony → G Felony	40%	No change in cost from this change. Post-Release Supervision: \$1,530 per conviction	Probation Parole Officer (PPO): \$53,760	35 convictions = 1 new PPO
	Class 1 Misdemeanor → H Felony	34%	Post-Release Supervision: \$1,530		35 new convictions = 1 new PPO

CONVICTIONS – SUSPENDED SENTENCE

	<i>Charge</i>	<i>Avg. Suspended</i>	<i>Cost of Supervision per Conviction</i>	<i>Cost of Staff</i>	<i>Equivalence</i>
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DPS – Community Corrections	Class H Felony → G Felony	60%	\$170 increase per conviction	PPO: \$53,760	316 new convictions = 1 new PPO
	Class 1 Misdemeanor → H Felony	66%	\$1,870 increase per conviction		29 new convictions = 1 new PPO

* All costs annualized

FISCAL IMPACT SUMMARY

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of an offense. Section 15.(a) of the proposed bill would increase the punishment for two rioting offenses: one from a Class H felony to a Class G felony and the other from a Class 1 misdemeanor to a Class H Felony.

The criminal offense modifications in the proposed bill may have a fiscal impact on the judicial and correction systems. However, despite some historical data on these offenses, the changes in this bill to the offenses leave the frequency of future charges and convictions uncertain, and the Fiscal Research Division (FRD) is unable to provide a reasonable estimate of the total fiscal impact. Each additional person charged with these crimes will result in costs to the judicial system and each additional person convicted will result in costs to the corrections system. The cost increases are based on the difference in the cost under the current law and the proposed changes in charge classification. The cost differences are summarized in the table above.

FISCAL IMPACT OF S.B.300, V.1

	<u>FY 2021-22</u>	<u>FY 2022-23</u>	<u>FY 2023-24</u>	<u>FY 2024-25</u>	<u>FY 2025-26</u>
State Impact					
General Fund Revenue	-	-	-	-	-
Less Expenditures	-	-	-	-	-
General Fund Impact	No Estimate Available - Refer to Fiscal Analysis section				

NET STATE IMPACT	No Estimate Available - Refer to Fiscal Analysis section
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FISCAL ANALYSIS

General

The Sentencing and Policy Advisory Commission (SPAC) prepares prison population projections for each bill containing a criminal penalty. SPAC assumes that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime rates. Likewise, FRD assumes no deterrent effects for any modifications to criminal penalties. The estimates in this Incarceration Note make no assumptions about the larger impact on crime rates or costs to society or the State.

There are three types of changes to offenses: new offenses, change to offense class, or change to the scope of the offense which may lead to an increase/decrease in the number of offenders charged. FRD assumes that new offenses and changes to an offense's scope will have no historical data upon which to estimate the number of charges or convictions that might occur. FRD assumes that a change in offense class may have an unknown effect on charge or conviction numbers. To that end, FRD estimates the average cost to the judicial and correction systems for one additional charge or conviction.

Judicial Branch

The Administrative Office of the Courts (AOC) provides FRD with a fiscal impact analysis for most criminal penalty bills and notes that because the bill proposal would increase a current Class H felony to a Class G felony and Class 1 misdemeanor to Class H felony the fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in charges and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

Section 15.(a) of the proposed bill would amend G.S. 14-288.2(b) by increasing a penalty from a Class 1 misdemeanor to a Class H felony offense. In calendar year 2020, 117 defendants were charged with a Class 1 misdemeanor public disturbance under G.S. 14-288.2. However, under G.S. 14-288.2, there are two misdemeanor rioting offenses discussed separately in subsection (b) and subsection (d), with only the one in subsection (b) being elevated by this proposed bill. AOC does not have data to differentiate how many of the 117 defendants would be charged at the elevated class nor how many would remain at the Class 1 misdemeanor level of. As a result, FRD cannot provide a reasonable estimate for the proposed change to this violation class.

Section 15.(a) of the proposed bill would also amend G.S. 14-288.2(c) by increasing a penalty from Class H felony to a Class G felony. In CY 2020, 107 defendants were charged with felony inciting to riot under G.S. 14-288.2. However, under this statute, there are two felony rioting offenses discussed separately in subsection (c) and subsection (e), with only the one in subsection (c) being elevated by this bill. AOC does not have data to differentiate how many of the 107 defendants would be charged with the elevated class violation, nor how many would remain at the Class H felony level violation. As a result, FRD cannot provide a reasonable estimate for the proposed changes to this violation class.

The Office of Indigent Defense Services (IDS) provides Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research uses this data to calculate a weighted average of IDS costs for each class of offense. This estimate assumes the appointment of a Private Assigned Counsel (PAC) attorney. In districts that have Public Defender (PD) offices, cases may be handled by those offices. In those instances, this cost may not be incurred, but the PD office may experience costs in terms of greater workload.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 78% of Class G misdemeanor cases. The weighted average cost of a new Class H felony is \$475 per case

for a PAC attorney. The weighted average cost of a new Class G felony is \$632 per case for a PAC attorney. The per charge increase to the PAC fund is \$157. However, because AOC does not have a specific offense code for this type of violation FRD cannot provide a reasonable estimate for the proposed changes to this violation class on IDS.

In an average based on three years of fiscal data from FY 2016-17 to FY 2018-19, IDS handled 78% of Class H felony cases. The weighted average cost of a new Class 1 misdemeanor is \$205 per case for a PAC attorney. The weighted average cost of a new Class H felony is \$475 per case for a PAC attorney. The per charge increase to the PAC fund is \$270. However, because AOC does not have a specific offense code for this type of violation and as a result FRD cannot provide a reasonable estimate for the proposed changes to this violation class on IDS.

Department of Public Safety – Prisons

Based on the most recent population projections and estimated bed capacity, the Prisons division will have surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional prison beds will be required from the changes in this bill. SPAC provides a threshold analysis when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that result in the need for one prison bed in the first year.

Increase from a Class H to Class G felony

In FY 2019-20, 40% of Class G felony convictions resulted in active sentences, with an average estimated time served of 14 months. The following table shows the estimated annual impact if there were 3 convictions (the threshold) or 20 convictions for this proposed offense per year. The five-year estimate considers the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class G Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
3 (Threshold)	1	2	2	2	2
20	8	15	15	15	15

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system based on FY 2019-20 expenditures is \$21.22 per day, or \$645 per month, which includes the cost of food, clothing, and health care. A Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months). For every additional Class G felony offender receiving an active sentence, the cost to the prison section will be \$9,030 (\$645 monthly cost times 14 months). An increase of \$2,580 in custody cost per conviction. The AOC does not have a specific offense code for violation described by G.S. 14-288.2(c) and as a result FRD is unable to provide a reasonable estimate for this increase in violation class.

Increase from a Class 1 Misdemeanor to Class H felony

This bill proposes changes to a penalty from a Class 1 misdemeanor offense to a Class H felony. Normally misdemeanor offenders who receive active sentences will serve them in the local jail and as a result creating new misdemeanors or changes in misdemeanor class from one misdemeanor to another are not expected to have any fiscal impact to prisons for active sentencing. However, because the proposed bill would amend G.S. 14-288.2(b) from a Class 1 misdemeanor to a Class H felony, the proposed changes are as if a new Class H felony were being created.

In FY 2019-20, 34% of Class H felony convictions resulted in active sentences, with an average estimated time served of 10 months. The following table shows the estimated annual impact if there were 4 convictions (the threshold) or 20 convictions for this proposed offense per year. The five-year estimate takes into account the combination of active sentences and probation and post-release supervision violations resulting in confinement, as well as growth rates adopted by the Sentencing Commission’s Forecasting Technical Advisory Group.

Estimated Prison Bed Impact Using Threshold Convictions and 20 Convictions Class H Felony					
Convictions	Year 1	Year 2	Year 3	Year 4	Year 5
4 (Threshold)	1	2	2	2	2
20	6	11	11	11	11

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system based on FY 2019-20 expenditures is \$21.22 per day, or \$645 per month, which includes the cost of food, clothing, and health care. In FY 2019-20, 34% of Class H felony offenders received active sentences averaging 10 months. For every additional Class H felony offender receiving an active sentence, the cost to the prison section will be \$6,450 (\$645 monthly cost times 10 months). The AOC does not have a specific offense code for this type of violation under G.S. 14-288.2(b) and as a result, FRD is unable to provide a reasonable estimate for this increase in violation class.

Department of Public Safety – Community Corrections

All felony offenders may be given exclusively active or suspended sentences or suspended in conjunction with imprisonment (split-sentence). Under S.L. 2011-192, the Justice Reinvestment Act (JRA), both community and intermediate probation may include sanctions such as electronic monitoring, short-term periods of confinement, community service, substance abuse assessment, monitoring, and treatment, or participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

Active Sentence

Increase from a Class H to Class G felony

All active sentences for felony offenses result in a minimum of nine months of post-release supervision (PRS) for F-I level offenses. All types of PRS are supervised by the Community Corrections Section (CCS). Based on FY 2019-20 expenditures, supervision by a probation officer costs \$170 per offender per month; no cost is assumed for those receiving unsupervised probation

or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probation. For every additional Class H felony offender receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender (\$170 per month times 9 months). The cost for every additional Class G felony is the same. As a result, FRD does not anticipate any fiscal impact to CCS active sentencing due to the proposed increase in this penalty.

Increase from a Class 1 Misdemeanor to Class H felony

Normally misdemeanor offenders who receive active sentences will serve them in the local jail and as a result creating new misdemeanors or changes in misdemeanor class from one misdemeanor to another are not expected to have any fiscal impact to prisons for active sentencing. However, because the proposed bill would amend G.S. 14-288.2(b) from a Class 1 misdemeanor to Class H felony, the proposed changes are as if a new Class H felony were being created. For every additional Class H felony offender receiving an active sentence, the cost to CCS of nine months of PRS is \$1,530 per offender (\$170 per month times 9 months). AOC does not have a specific offense code for the violation under General Statute 14-288.2(b) and as a result, FRD is unable to provide a reasonable estimate of this increase in costs on CCS from this proposed change in violation class.

Suspended Sentence

Increase from a Class H to Class G felony

CCS also oversees probation. In FY 2019-20, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every additional Class H felony offender receiving a non-active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). In FY 2019-20, 60% of Class G felony offenders received suspended sentences. The average length of probation imposed for this offense class was 27 months. For every additional Class G felony offender receiving a non-active sentence, the average cost to CCS would be \$4,590 (\$170 per month times 27 months). Increasing a Class H felony to a Class G felony is a \$170 increase per conviction. Because the annual cost of a probation parole officer (PPO) is \$53,760, FRD finds that 316 additional convictions of this changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of the Community Corrections Section by one PPO. Because the AOC does not have a specific offense code for the violation under General Statute 14-288.2(c), FRD is unable to provide a reliable estimate for the fiscal impact on CCS suspended sentencing for this proposed change in violation class.

Increase from a Class 1 Misdemeanor to Class H Felony

In FY 2019-20, 62% of Class 1 misdemeanor offenders received probation. Supervision by a probation officer costs \$170 per offender per month. The average length of probation imposed for this class of offense was 15 months. Therefore, at a minimum, one Class 1 misdemeanor conviction resulting in probation will require at least 15 months of supervision. The cost of 15 months of supervision is \$2,550 per offender (\$170 per month times 15 months).

In FY 2019-20, 66% of Class H felony offenders received suspended sentences. The average length of probation imposed for this offense class was 26 months. For every additional Class H felony offender receiving a non-active sentence, the average cost to CCS would be \$4,420 (\$170 per month times 26 months). Increasing a Class 1 misdemeanor to a Class H felony is a \$1,870 increase per

conviction. Because the annual cost of a PPO is \$53,760, FRD finds that 29 additional convictions of this changed offense resulting in a suspended sentence would be equivalent to increasing the workload need of the CCS by one PPO. Because the AOC does not have a specific offense code for the violation under General Statute 14-288.2(b), FRD is unable to provide a reliable estimate for the fiscal impact on CCS suspended sentencing from this proposed change in violation class.

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